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October 28, 2018

Via Certified Mail/Return Receipt Requested
& Electronic Mail (stevens.jim@epa.gov)

Mr. James D. Stevens
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

Re: Citizens Gas & Electric Former Manufactured Gas Plant, Council Bluffs, Iowa
EP File: IAD 984569093

Response to Information Request to Office Depot, Inc. (dated August 27, 2018)

Dear Mr. Stevens:

As you may recall from our numerous communications over the past two months, Office Depot, Inc. ("Office Depot") requested my assistance in responding to the Information Request dated August 27, 2018 (the "Information Request") that it received from Kenneth S. Buchholz, Chief of the Assessment, Emergency Response & Removal for the Superfund Division of Region 7 of the United States Environmental Protection Agency (the "Agency") on August 28, 2018. The purpose of this letter is to respond on behalf of Office Depot to the CERCLA 104(e) questions contained in Enclosure B to the Agency's Information Requests (the "Questions").

Office Depot understands that the Information Request seeks information in an effort to assist in the evaluation of potential successor liability arising from activities at a "facility" defined as "the former manufactured gas plant described in [the Information Request], in Council Bluffs, Iowa" ("Facility"). Office Depot further understands that the activities giving rise to liability reportedly took place from approximately 1900 to 1928, when the Facility was reportedly operated by Citizens Gas & Electric Company of Council Bluffs ("CGE") on property originally owned by Council Bluffs Gas & Electric Company ("Site"). Prior to receipt of the Information Request, Office Depot had never heard of the Facility, the Site or the Agency's investigation into the same. As such, Office Depot questioned why it received the Information Request.

Nonetheless, in an effort to respond to the Information Request, Office Depot has undertaken an internal investigation into the matters that are the subject of the Information Request. Given the limited information provided about the Facility and the Site, the timeframe involved (early 1900s) and the absence of personnel, it has proved to be very difficult to locate information responsive to the Information Request. As you may recall, I contacted you a number of times over the past two months on behalf of Office Depot to seek your help in understanding the basis for the Information Request and to inform you that Office Depot was having difficulty finding an association between transactions involving the Facility, the Site and Office Depot and/or any entity involved in a merger, asset sale, stock exchange, or other corporate action. On two separate occasions, you were kind enough to provide additional information in response to my inquiries.

Based on the additional information you provided, it appears that there is a belief by some that Office Depot may have somehow succeeded to the liabilities arising from activities at the Facility or the Site through a number of corporate transactions. The document you provided entitled "*Potentially Responsible Party Packet: Citizens Gas & Electric Company of Council Bluffs (NJ)*" (the "Packet") theorizes about a number of possible scenarios for corporate succession based on what is described as the complicated nature of the corporate history of CGE. As we understand from information contained in the *Packet*, Scenario II.B. is the one and only scenario or theory under which OfficeMax, Inc. ("OfficeMax") would somehow succeed to liability for the activities of CGE. This theory is also depicted in the chart entitled "*Council Bluffs MGP Ownership History*" ("*Ownership Scenario Chart*") that you provided in response to my second request for information.

Office Depot cannot verify the accuracy of the corporate succession scenario in the *Packet* and the *Ownership Scenario Chart*. Office Depot does, however, respectfully take issue with the Information Requests to the extent it seeks information about transactions involving Office Depot with no known or reasonably relevant nexus to the Facility or the Site. As noted in the *Packet*, a number of theoretical connections and successions would need to be established before it would be appropriate to consider whether a transaction involving Office Depot somehow resulted in successor liability for activities at the Facility or the Site dating back to 1900. Moreover, even if all the tenuous nexuses could be confirmed, one would also have to establish that Omaha Electric Light & Power Company ("OELP") succeeded to the liabilities of CGE when acquiring the stock of CGE in 1903. Next, one would have to establish that despite never owning the Site and only bearing any relationship to the Site through possibly CGE, Nebraska Power Company ("NPC") succeeded to the liabilities of CGE. There is no information or documentation indicating any of CGE's liabilities were transferred or assumed by NPC. NPC's liability for the Site is a necessary pre-requisite to reach up to American Power & Light Company ("APL") and allege APL succeeded to the liabilities of OELP's alleged successor, NPC, and, then, in turn, establish that Electric Bond & Share Co. ("EBASCO") succeeded to the liability of APL. Moreover, even if it could be shown that EBASCO succeeded to APL, Office Depot's theoretical connection as hypothesized in the Information Request is through corporate transactions and successor liability that have not been established and are unsupported by any information provided to Office Depot. In sum,

Office Depot respectfully maintains that only after establishing the existence of these tenuous corporate connections, unsubstantiated successions, and successor liability would the relationships of Office Depot be reasonably relevant to the subject of this matter.

Given the absence of any known relationship between Office Depot and many of the entities discussed above, Office Depot has focused its investigation on transactions that may relate to the Facility and/or the Site. And, after conducting a thorough investigation, Office Depot has discovered no connection between itself or its subsidiaries and the Facility or the Site. To the best of its knowledge, after a thorough review of records, there is no record referencing the Facility, the Site or any power plant site in Council Bluffs, Iowa. In addition, Office Depot's internal records' review did not find any connection between Office Depot and CGE, OELP, NPC, APL or any entity by the name of Electric Industries as noted on the *Ownership Scenario Chart*, and Office Depot has no reason to believe such a connection ever existed. Further, neither a corporate records' search nor a public records' search resulted in any finding of direct involvement between the Facility or the Site, and EBASCO or Ebasco Industries, Inc.

In addition to reviewing its records, Office Depot searched publicly available information in an effort to find a more specific description of the location of the Facility or the Site. The only additional information Office Depot was able to uncover was that the current property owner apparently has a physical address of 1023 S 7th Street, Council Bluffs, Iowa 51501. In the course of its investigation, Office Depot found no reference or records related to this address or any other property located in Council Bluffs, Iowa, other than unrelated Office Depot or OfficeMax branded retail stores. There simply does not appear to be any connection between the Facility or the Site and Office Depot.

Respectfully, for purposes of this response, Office Depot also does not admit that the Facility that is the subject of the Information Request is properly identified as a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. §960(9). Office Depot also does not admit or deny any other fact, conclusion or allegation stated in the Request Letter.

Subject to an understanding that Office Depot reserves all rights it may have to assert legal or factual objections to the Questions and to the limitations described and exceptions taken above, as well as the specific objections below, Office Depot responds to the Questions as follows:

Requests for Information

1. Question No. 1:

Describe the transaction between EBASCO Industries, Inc. and Boise Cascade Corporation, including whether the transaction consisted of a merger, consolidation, sale or transfer of assets and submit all documents in your possession custody or control relating to such transactions, including all documents pertaining to any agreements, express or implied, relating to the assignment, assumption or retention of potential

liabilities of EBASCO Industries, Inc., as they may relate to Electric Bond & Share Company and/or the facility.

Response:

Office Depot respectfully objects to Question No. 1, on the grounds that it seeks information that is not reasonably relevant to the matter under investigation to the extent it requests information regarding a transaction(s) between EBASCO Industries, Inc. and BCC in the absence of an established connection between EBASCO Industries and/or BCC and the Facility or the Site.

Subject to this objection and the limitations described and exceptions taken above, Office Depot is aware of no transaction that relates to potential liability for the Facility or the Site or activities at the Facility or the Site that date back to the early 1900s. To the best of its knowledge, after a thorough review of records, Office Depot has no documents pertaining to a transaction that relates to the Facility or the Site.

2. *Question No. 2:*

Describe the transaction between Office Max (formerly known as Boise Cascade Corporation) and Office Depot, including whether the transaction consisted of a merger, consolidation, sale or transfer of assets and submit all documents in your possession custody or control relating to such transactions, including all documents pertaining to any agreements, express or implied, relating to the assignment, assumption or retention of potential liabilities of EBASCO Industries, Inc., as they may relate to Electric Bond & Share and/or the facility.

Response:

Office Depot respectfully objects to Question No. 2, on the grounds that it seeks information that is not reasonably relevant to the matter under investigation to the extent it requests information regarding any transaction between OfficeMax and Office Depot in the absence of an established connection between OfficeMax and/or Office Depot and the Facility or the Site.

Subject to this objection and the limitations described and exceptions taken above, Office Depot and OfficeMax entered into a stock merger on or about November 5, 2013. Office Depot and OfficeMax are related entities with on-going activities that involve numerous inter-related transactions. However, no transaction between Office Depot and OfficeMax has any reasonable relevance to potential liability for the Facility or the Site or activities at the Facility or the Site that date back to the early 1900s. To the best of its knowledge, after a thorough review of records, neither Office Depot nor OfficeMax have any documents pertaining to a transaction that relates to the Facility or the Site.

3. Question No. 3:

Identify the current status of EBASCO Industries, Inc. including the following, unless described in the answers to questions 1 and 2 above:

(a) Provide the current company name, ownership, whether it has dissolved itself into any other corporation, subsidiary, division or other entity, and if so, identify such transaction;

(b) For each such transaction identified above, state if the transaction consisted of a merger, consolidation, sale or transfer of assets and submit all documents in your possession custody or control relating to such transactions, including all documents pertaining to any agreements, express or implied relating to the assignment, assumption or retention of potential liabilities of EBASCO Industries, Inc., as they may relate to Electric Bond & Share and/or the facility.

Response:

Office Depot respectfully objects to Question No. 3, on the grounds that it seeks information that is not reasonably relevant to the matter under investigation to the extent it requests information regarding the current status and transactions of EBASCO Industries, Inc. in the absence of an established connection between EBASCO Industries, Inc. and the Facility or the Site.

Subject to this objection and the limitations described and exceptions taken above, to the best of its knowledge, Office Depot understands that EBASCO Industries Inc. was a holding company that ceased to exist on or after 1969. Office Depot has no documents relating to the dissolution of EBASCO Industries, Inc.

4. Question No. 4:

If you are aware of any other person or entity with information responsive to this request, please identify such persons.

Response:

Office Depot is aware of no other person or entity with information responsive to this Information Request.

If you have any questions relating to this response, please do not hesitate to contact me directly at noelle.wooten@nelsonmullins.com, or 704.417.3035.

Mr. James D. Stevens
October 28, 2018
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With best regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Noelle E Wooten', with a long horizontal flourish extending to the right.

Noelle E Wooten
Legal Counsel for Office Depot, Inc.